

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

<b>Todd &amp; Christine Drake,</b> Petitioners-Appellants,  <b>v.</b>  <b>Polk County Board of Review,</b> Respondent-Appellee.	<b>ORDER</b>  <b>Docket No. 11-77-1156</b> <b>Parcel No. 291/00345-133-000</b>
---------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------

On April 22, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants Todd and Christine Drake were represented by Kevin Huerkamp of Next Generation Realty, Des Moines, Iowa. Assistant County Attorney David Hibbard represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Todd and Christine Drake are the owners of property located at 1718 NW 120th Street, Clive, Iowa. The real estate was classified residential on the January 1, 2011, assessment. It was valued at \$773,100, representing \$148,700 in land value and \$624,400 in improvement value. The Drakes protested the assessment to the Polk County Board of Review on the ground that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1). The Board of Review granted the protest, in part, reducing the total value to \$746,300.

The Drakes then appealed to this Board reasserting their claim. They also indicated they believe the property is assessed for more than authorized by law under Iowa Code section

441.37(1)(a)(2); however, because they did not first claim over assessment before the Board of Review, we are without jurisdiction to consider this ground. They believe the correct value of their property is \$575,600, representing \$148,700 in land value and \$426,900 in improvement value.

According to the property record card, the subject property is a one-and-a-half-story dwelling built in 2002. It has 2536 square-feet of above-grade living area and a 1915 square-foot, walk-out basement with 1350 square feet of living-quarter quality finish. The property also features a deck, patio, and open front porch, as well as an 893 square-foot, three-car, attached garage. The subject site is 0.955-acres.

On their protest form to the Board of Review, the Drakes listed the address and assessed value of five properties they considered equity comparables. All the properties were included in the Board of Review's equity analysis, however none of them were sales and a ratio analysis was not developed. For this reason we give this information no consideration.

At hearing, the Drakes submitted several additional exhibits to demonstrate the subject property is inequitably assessed. Kevin Huerkamp testified regarding these exhibits. He is a professional real estate agent, but he stated he is not a real estate appraiser. Huerkamp stated Exhibit 6 is a "market analysis." It includes eight properties he considered comparable to the subject that sold between March 2009 to December 2010. The sales prices ranged from \$560,000 to \$700,000. We note several flaws with his analysis, but because there is not a market value claim before this Board, we find it unnecessary to comment on them.

Huerkamp also testified regarding Exhibit 7 a listing of homes sold in Clive and West Des Moines, which he asserts demonstrates the subject property is inequitably assessed on a cost per-square-foot basis. He selected eleven properties based on the following parameters:

- Sold between 1/1/2009 and 12/31/2010
- One-and-a-half or two-story homes only
- Built between 1993 and 2011

- No parameters on size
- Grades 0 thru 1
- Sold for at least \$500,000 (no maximum)
- Deed sales only
- Fully assessed

The properties had sale prices from ranging from \$500,000 to \$700,000. His primary concern was that the subject property's second level area, which is of 592 square feet, was assessed at a higher cost per-square-foot than all of the comparable properties. The second level living area of the subject property has an assessment of \$137.74 per square foot. The second level living areas for the eleven properties ranged from 746 square-feet to 2157 square-feet, with a median of 1740 square-feet. These properties have assessments between \$58.93 and \$102.26 per square foot for the upper level living area, with a median of \$77.23 per square foot. The upper level living area of these comparables are all larger than the subject property, thus it is reasonable the value per square foot for this feature would be lower on the comparables.

Polk County Deputy Assessor Amy Rasmussen-Thorne explained the law of diminishing return, which is also known as the law of decreasing return. This commonly known valuation principle is based on "the premise that additional expenditures beyond a certain point (the point of decreasing returns) will not yield a return commensurate with the additional investment." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE pp. 40 (13th ed. 2008). Rasmussen-Thorne further clarified that, based on this known principle, as size increases costs decrease. This explains why the properties Huerkamp selected have lower costs associated with the second level living area as compared to the subject property; the comparables have larger upper-level living areas resulting in a lower per-square-foot value. Additionally, we note that the Drakes' property has a 0+05 grade, which is higher than all of the properties submitted for comparison. The differences in grade would also impact the costs associated with each element of comparison.

Other than Rasmussen-Thorne's testimony, the Board of Review did not provide any new evidence.

### ***Conclusion of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the*

*City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.

*Id.* at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 41.21(1).

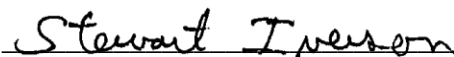
Nevertheless, in some rare instances, the test may be satisfied. The Drakes did not provide sufficient evidence to support an equity claim under either test. While they provided eleven properties for consideration, we do not find them to be sufficiently similar in quality (grade) or size, when some are as much as 800 square feet smaller or larger in total living area as compared to the subject property.

THE APPEAL BOARD ORDERS the assessment of Todd and Christine Drake's property located at 1718 NW 120th Street, Clive, Iowa, of \$746,300 as of January 1, 2011, as set by the Polk County Board of Review is affirmed.

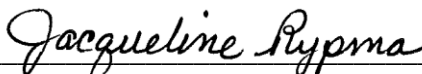
Dated this 16th day of May 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:  
Kevin Huerkamp  
Next Generation Realty  
6000 Grand Avenue  
Des Moines, Iowa 50312  
REPRESENTATIVE FOR APPELLANT

David Hibbard  
111 Court Avenue  
Room 340  
Des Moines, Iowa 50309  
ATTORNEY FOR APPELLEE

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>May 16, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	